

ORDINANCE NO. _____

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY
OF CATHEDRAL CITY ADDING CHAPTER 9.106 TITLED
"DEDICATION OF LAND FOR PARK AND
RECREATIONAL PURPOSES AND PAYMENT OF IN-LIEU
FEES" TO TITLE 9, PLANNING AND ZONING OF THE
CATHEDRAL CITY MUNICIPAL CODE**

WHEREAS, the Parks and Recreation Element of the City's General Plan provides that the City will utilize the Quimby Act (the "Act", Government Code section 66477 et seq.) to provide at least three acres of community and neighborhood parks per 1,000 residents residing within the subdivision; and

WHEREAS, the Act provides that the City Council may, by ordinance, require the dedication of land or impose a requirement of the payment of fees in lieu thereof, or a combination of both, for park and recreational purposes as a condition to the approval of a tentative map or a parcel map; and

WHEREAS, the Act provides that, prior to adoption of such an ordinance, the City Council must have adopted a general plan or specific plan containing policies and standards for parks and recreational facilities, and the park and recreational facilities are in accordance with definite principles and standards; and

WHEREAS, in furtherance of the Parks and Recreation Element of the City's General Plan, the Cathedral City Parks and Recreation Master Plan, 2005 was prepared, which Plan contains policies and standards for parks and recreation facilities; and

WHEREAS, the adoption of this ordinance complies with the California Environmental Quality Act.

NOW THEREFORE, THE CITY COUNCIL OF THE CITY OF CATHEDRAL CITY DOES ORDAIN AS FOLLOWS:

Section 1. TITLE

This ordinance shall be known as the "Quimby Act Ordinance."

Section 2. ADDING CHAPTER 9.106 TO THE MUNICIPAL CODE

Chapter 9.106 "Dedication Of Land For Park And Recreational Purposes And Payment Of In-Lieu Fees" shall be added to Title 9 "Planning and Zoning" of the Cathedral City Municipal Code and shall read as follows:

CHAPTER 9.106
Dedication of Land for Park and Recreational Purposes
and Payment of In-Lieu Fees

9.106.10 Authority, Purpose and Intent

This chapter is enacted pursuant to the authority granted by California Government Code section 66477 et seq. (the "Quimby Act") which specifically authorizes the City to require dedication of parkland or the payment of fees in-lieu of such dedication in set amounts to meet the needs of the citizens of the community for parkland and to further the health, safety and general welfare of the community.

The purpose of this chapter is to establish the procedures for requiring the dedication of land, the payment of fees in-lieu thereof (or a combination of both) to serve new subdivisions in accordance with the requirements of the City's General Plan and in compliance with the requirements of the Cathedral City Parks and Recreation Master Plan, 2005 ("Parks Master Plan") and the requirements of the Quimby Act.

9.106.020 Definitions

For the purpose of this chapter, unless otherwise apparent from the context, the following terms, phrases, words and their derivations shall have the meanings respectively ascribed to them by this section:

"Act" means the Quimby Act, Government Code section 66477 et seq.

"Common Interest Development" means the type of development project defined at section 1351 of the California Civil Code.

"Community Park" means a park that generally services an area within a five mile radius and is usually twenty acres or larger. This type of park will generally allow for a greater variety of passive and active recreation opportunities and areas or buildings for community festivals and civic events, as well as for organized indoor sport and athletic competitions.

"Dwelling Unit" means each single-family dwelling, each dwelling unit in a duplex, apartment house or dwelling, condominium, mobile home unit, and any other place designed, occupied or intended for occupancy as a separate living quarter by one or more persons for living, sleeping, cooking and eating.

"Fair Market Value" means the fair market value of undeveloped residential real property as applicable for the density classifications established by the City Council for the implementation of this chapter.

"Parks Master Plan" means the City of Cathedral City Parks and Recreation Master Plan, 2005, which was adopted and approved by the City Council on December 14, 2005. A copy of the Parks Master Plan is maintained on file with the City Clerk.

"Neighborhood Park" means a park that generally services an area within a one and one-half mile radius and is generally five to ten acres. This type of park is designed for a variety of active and passive recreation opportunities.

"Park" means a parcel or contiguous parcels of land that provides recreational land and facilities for the benefit and enjoyment of the residents and visitors of the City.

"Recreational Facilities" means those improvements to parks which provide a recreational opportunity for the user, including, but not limited to, ball fields, lighting, swimming pools, tennis courts, picnic shelters, trails, play/tot lots, and community buildings.

"Subdivider" means a person, firm, corporation, partnership or association who proposes to divide, divides or causes to be divided real property into a subdivision for himself or for others.

"Subdivision" means that definition contained in Government Code Section 66424 and shall include any division of land governed by the provisions of the Subdivision Map Act (commencing with Government Code Section 66410).

9.106.030 Applicability; Exceptions

A. Every subdivider who subdivides land for residential purposes shall dedicate a portion of such land, pay a fee, or a combination of both, at the option of the City as set forth in this chapter.

B. The provisions of this chapter do not apply to industrial and commercial subdivisions, or to condominium projects or stock cooperatives that consist of the subdivision of air space in an existing apartment building that is more than five years old when no new dwelling units are being added.

C. The provisions of this chapter do not apply to subdivisions containing less than five parcels and not used for residential purposes; provided however, that a condition may be placed on the approval of a parcel map, that if a building permit is requested for the construction of a residential structure, or structures, on one or more of the parcels, within four years, the fee may be required to be paid by the owner of each such parcel as a condition to the issuance of the permit.

D. The City Council may waive all, or any portion of, the dedication or fees

required by this chapter if it finds that a subdivision will serve a public purpose or satisfy a public need and the subdivision is located within a redevelopment project area or other special district, or involves the participation of the City or the Cathedral City Redevelopment Agency. Moreover, the City Council may, from time to time, and as the need may arise, set forth, by resolution, specific limitations, which will apply to waivers of fees pursuant to this section.

9.106.040 Park Acreage Standard

The public interest, convenience, health, welfare, and safety require that three net acres of useable parkland for each one thousand (1,000) persons residing within a subdivision shall be devoted to parks.

9.106.050 Subdivider's Notice to Dedicate Land, Pay In-lieu Fee, or Both

A At the time of filing a tentative tract or parcel map, the subdivider of the property shall indicate whether he or she desires to dedicate property for park and recreational purposes, pay the in-lieu fee or a combination of both dedication and payment.

B. If the subdivider desires to dedicate land within the subdivision pursuant to this chapter, the location of the land proposed to be dedicated shall be indicated on the map.

C. If the subdivider desires to dedicate land outside of the subdivision pursuant to this chapter, at the time of filing the tentative tract or parcel map, the subdivider of the property shall submit the following to the City:

1. An environmental assessment for the land proposed to be dedicated prepared in compliance with the California Environmental Quality Act and as required by the City Planner.

2. A schematic site plan, which shall include but not be limited to, identifying the boundaries of the dedicated land, site access and improvements.

9.106.060 Dedication of Land or Payment of Fees or a Combination of Both

A. Upon consideration of a tentative parcel map or a tentative tract map involving fifty or fewer parcels, a condition of approval shall be placed on the map that the subdivider shall pay an in-lieu fee for park or recreational purposes pursuant to this chapter. If applicable, the City Planner shall also recommend the credits for which the subdivider is eligible pursuant to section 9.106.120.

B. Upon consideration of a tentative tract map involving more than fifty (50) parcels, a condition of approval shall be placed on the map that the subdivider

shall do one of the following:

1. Dedicate land for park or recreational purposes pursuant to this chapter;
2. Pay an in-lieu fee for park or recreational purposes pursuant to this chapter; or
3. Both dedicate land and pay an in-lieu fee for park or recreational purposes pursuant to this chapter.

If applicable, the City Planner shall also determine the credits for which the subdivider is eligible pursuant to section 9.106.120.

C. The City Planner shall base his or her recommendation under this section upon the following:

1. The requirements of the Quimby Act.
2. The City's General Plan;
3. The Parks Master Plan;
4. The topography, geology, access, and location of the land in the subdivision available for dedication;
5. The size and shape of the subdivision and the land available for dedication;
6. The location of existing or proposed park sites and recreational facilities; and
7. The desirability of developing the land proposed for dedication for park and recreational purposes as determined by a schematic site plan submitted by the subdivider.

D. The determination of the City Planner as to whether the subdivider shall dedicate land, pay the in-lieu fee or a combination thereof, shall be final and conclusive but may be appealed to the City Council pursuant to the appeals procedure contained in Chapter 2.04.

9.106.070 Timing, Standards and Formula for Land Dedication; Required Improvements

The following shall apply when a subdivider is conditioned to dedicate land pursuant to this chapter.

A. As condition of approval of a final subdivision tract map or final parcel map, the subdivider shall dedicate all required lands and improvements to the City pursuant to section 9.106.080.

B. The amount of land to be dedicated by a subdivider shall be determined as follows:

1. The City Planner shall determine the number of dwelling units per gross acre to be constructed. The City shall determine the average number of persons per dwelling unit, which shall be based upon the average household size for the dwelling units to be constructed, as disclosed by the most recent available Federal census figures.

2. The amount of land to be dedicated shall be computed by multiplying the product of (i) the number of proposed dwelling units, (ii) the average number of persons per dwelling unit within the density classification appropriate for the subdivision in question, and (iii) the park acreage standard of 3 acres per 1,000 residents of the subdivision.

3. The following formula demonstrates the method of calculating the amount of land to be dedicated:

Number of Dwelling Units Based on Proposed Map	x	3.03 (average number of persons per dwelling) ¹	x	0.003 (3 Acres per 1,000 residents of the subdivision)	=	Number of acres to be dedicated
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C. The conditions of approval for land dedication under this chapter shall be based on the following:

1. The natural features of the area, including the topography and geology;

2. The availability of access;

3. The location;

4. The size and shape of the subdivision;

5. The land available to dedication and the feasibility of dedication;

6. The availability of park sites for acquisition, development, improvement, or rehabilitation, in case land dedication is considered not feasible;

7. The location of existing and proposed park sites;

¹ 2000 U.S. Census.

8. The suitability for patrol, supervision and maintenance; and

9. The compatibility of dedication with the City's general plan and other adopted plans pertaining to parks and recreation.

D. When the City Planner has required the dedication of land pursuant to this chapter, subdivider shall, without credit, as a further condition of such approval, construct and install the following public improvements within the dedicated land and adjoining public rights-of-way, which are in addition to any parks and recreation facilities and improvements impact fees imposed upon the project:

1. Full street improvements and utility connections including, but not limited to, curbs, gutters, relocation of existing public utility facilities, street paving, traffic control devices, street trees, and sidewalks to the dedicated land.

2. Fencing consistent with City improvement standard along the property lines that are contiguous to the park.

3. Improve the drainage through the park site.

4. Minimal physical improvements, not including recreational facilities, building or equipment, which the City determines are necessary for acceptance of the land for park and recreational purposes.

5. Access from the park and recreational facilities to an existing or proposed public street, unless the city determines that such access is unnecessary for maintenance of the park area or use of the park.

6. Water, sewer, grading and drainage improvements, in addition to those grading, drainage, irrigation and planting improvements required under other City ordinances.

7. Any other public improvements that the City determines are necessary in order to make the dedicated land suitable for development as a park or recreation facility.

9.106.080 Dedication of Land

A. The dedication of land to the City pursuant to this chapter shall be accomplished in accordance with the provisions of the Subdivision Map Act.

B. Real property dedicated to the City pursuant to the provisions of this chapter shall be:

1. Conveyed by grant deed in fee simple or irrevocably offered for

dedication to the City by the subdivider free and clear of all encumbrances, except those which will not interfere with the use of the property for park and recreational purposes and which the City agrees to accept;

2. Restricted to park and recreational purposes; and

3. Permanently devoted or dedicated to use by the general public, unless a satisfactory substitute is approved by the City Planner. Where fees are required, they shall be deposited with the City at the time prescribed by Section 9.106.090, paragraph A.

9.106.090 Timing, Standards and Formula for Payment of In-Lieu Fee

The following shall apply when a subdivider is conditioned to pay the in-lieu fee proposed by this chapter.

A. As a condition of approval of a final subdivision tract map or final parcel map, the subdivider shall pay the full amount of the in-lieu fee.

B. The amount of the fee the subdivider shall pay shall be determined as follows:

1. The City Planner shall determine the per acre fair market value of the unimproved land within the subdivision. One of the following methods shall be used to determine the fair market value:

a. Assessed land value based on records of the Riverside County Assessor's Office.

b. Current sales prices of land within, or in the vicinity of the subdivision.

c. Appraised land value based upon the determination of a qualified appraiser.

2. The following formula demonstrates the method of calculating the in-lieu fee:

Number of Dwelling Units Based on Proposed Map	x	3.03 (average number of persons per dwelling) ²	x	0.003 (3 Acres per 1,000 residents of the subdivision)	x	Land acquisition costs per acre	=	Total in-lieu fees
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²

2000 U.S. Census.

9.106.100 Timing, Standards and Formula for Combination of Dedication of Land and Payment of In-Lieu Fee for Subdivisions of Fifty or More Parcels

When only a portion of the land needed to satisfy the dedication requirement meets the minimum park standards and is acceptable to the City as a park site and is located within the proposed subdivision, such portion shall be dedicated for park purposes and a fee, computed pursuant to section 9.106.090 shall be paid for the additional land that would have been required to be dedicated pursuant to section 9.106.070.

9.106.110 Use of Dedicated Land and In-Lieu Fees; Development Schedule

A. Land dedicated to and accepted by the city pursuant to this chapter shall be used for the purpose of developing parks and recreational facilities which serve the residents of the subdivision in accordance with a development schedule adopted by the City Council. Said schedule shall specify how and when such land will be used for the development of neighborhood or community park facilities.

B. In-lieu fees paid pursuant to this chapter shall be used for the acquisition of land suitable for park and/or recreational use and the development of new and existing park and recreational facilities.

9.106.120 Credits.

A. At the time of approval of the final tract map or parcel map, the subdivider shall receive a credit for the value of park and recreation improvements, including equipment, provided to the dedicated land, provided said improvements are made or installed with the City Planner's prior approval and to the City Planner's satisfaction. The City Planner shall determine the value of the improvements..

B. At the time of approval of a final tract map or parcel map the subdivider shall receive a credit of twenty-five percent (25%) of the requirement for dedication of land or payment of fees as follows:

1. A common interest development with private land that satisfies the criteria for dedicated park and recreational land pursuant to section 9.106.070 and is dedicated for active recreational purposes as required by this section ("private and dedicated park land") shall be eligible to receive credit for the value of such private land. The City Planner shall determine the reasonable value of the improvements.

2. A residential subdivision with private land that satisfies the criteria for dedicated park and recreational land pursuant to section 9.106.070 and is

dedicated for active recreational purposes as required by this section ("private and dedicated park land") shall receive credit for the value of such private land. The City Planner shall determine the reasonable value of the improvements.

C. For purposes of this section, "active recreational purposes" means recreation facilities open to and accessible by all residents of the development and their guests and invitees and designed to provide individual or group activities of an active nature including, but not limited to the following:

1. Open spaces dedicated to the active recreational pursuits such as soccer, golf, baseball, softball and football.
2. Tennis courts, badminton courts, shuffleboard courts or similar handsurfaced areas especially designed and exclusively used for court games.
3. Recreational swimming pools and other swimming areas.
4. Golf courses.
5. Children's play areas.
6. Community gardens.
7. Water courses, drainage areas and other water bodies, provided:
 - (a) the areas are suitable for active recreational use;
 - (b) the areas will actually be used for active recreation; and
 - (c) the proposed type of active recreational use of the area is permitted by the City's general plan or other City applicable plan.
8. "Active recreational uses" does not include the following:
 - (a) Land that has greater than a five (5) percent slope.
 - (b) Natural open space.
 - (c) Nature study areas.
 - (d) Open space for buffer areas.
 - (e) Scenic overlooks.

D. Use of the private and dedicated park land must be restricted for park and recreation purposes by a recorded park provision agreement or such other

recorded covenant acceptable to the City Attorney. Said agreement or covenant shall run with the land in favor of the future owners of the property within the subdivision and shall not be defeated or eliminated without the City Council's prior consent and in no event without providing equivalent land elsewhere within the subdivision or at such other location as will serve the park or recreation requirements of the residents of the subdivision.

E. Each resident of the subdivision must be eligible to use the private and dedicated park land and each lot or dwelling unit within the subdivision is subject to a charge for a proportionate share of the cost and expenses to operate and maintain the land.

F. Yards, court areas, setbacks and other open space areas required to be maintained by this Code, the Building Code or other regulations of the City shall not be included in the computation of private and dedicated park land.

G. The aggregate amount of private and dedicated park land to be provided under this section shall not be less than the park acreage standard set forth in Section 9.106.040 (i.e., 3.0 acres of useable park land for each one thousand (1,000) persons residing within the subdivision).

9.106.130 Reserved.

9.106.140 Reserved.

9.106.150 Refunds.

Fees paid to the City and deposited into the park acquisition and development fund shall be committed within five years after payment of such fees or the issuance of building permits on one-half of the lots created by the subdivision, whichever occurs later. If the fees are not committed, they shall be distributed and paid without any deductions to the then record owners of the subdivision in the same proportion as the size of their lot bears to the total area of all lots within the subdivision.

9.106.160 Disposition of Proceeds-Fund Created.

A. All proceeds from the fees collected under this chapter shall be paid into a special fund of the City entitled "Park Acquisition and Development Fund" which fund is hereby created. All sums collected pursuant to the provisions of this chapter, together with any interest income earned thereon, shall be used only for the purpose of acquiring, building, improving, expanding and/or developing City parks in accordance with the requirements of this chapter.

B. In the event that bonds or similar debt instruments are issued for the advanced provision of park and recreational facilities for which in-lieu fees may

be expended, such fees may be used to pay debt service on such bonds or similar debt instruments to the extent that the facilities provided are of the type to which the fees involved relate.

C. Funds may be used to provide refunds as described in Section 9.106.150.

D. The Director of Finance shall maintain records specifically identifying the origin of the funds used for any project or improvement funded, in whole or in part, by the Park Acquisition and Development Fund. Such records shall enable the Director of Finance to trace the fees from new residential subdivisions to specific projects funded by each subdivision. Any interest accruing on account of time deposit of the fund, or otherwise, shall be deposited to the credit of the fund.

E. Upon receipt of a written application from the City Planner for disbursement of monies from the Park Acquisition and Development Fund on account of expenditures made or proposed for the benefit or use of parks or recreational facilities, the Director of Finance shall immediately advise the City Manager (or his designee) and provide him with copies of any accompanying documents or papers that might have been submitted in support of the application. Within ten days after receipt of such notice, the City Manager shall advise the Director of Finance whether the disbursement made or proposed is consistent with this chapter. If the City Manager fails to so certify within ten days, it shall be presumed that he has made a positive finding therein. Within five days thereafter, the Director of Finance shall, if a positive finding has been made or presumed, approve payment as requested.

9.106.170 Controlling State Law.

The provisions of this chapter and any resolution adopted pursuant hereto shall at all times be subject and subordinate to the provisions of the Quimby Act, as the same presently exists or may hereafter be amended from time to time, to the extent the same are applicable. In the event of any conflict between the provisions of this chapter and state law, the latter shall control.

Section 3. ENVIRONMENTAL FINDINGS

The City has complied with the California Environmental Quality Act in the approval of the subject regulations in that the adoption of this Ordinance establishing regulations for the payment of fees for park and recreational purposes creates and/or modifies a government funding mechanism which is not a physical change in the environment and therefore, is not a project under CEQA. 14 Cal. Code of Regulations §§ 15378(b)(4).

Section 4. SEVERABILITY

The City Council declares that, should any provision, section, paragraph, sentence or word of this ordinance be rendered or declared invalid by any final court action in a court of competent jurisdiction or by reason of any preemptive legislation, the remaining provisions, sections, paragraphs, sentences or words of this ordinance as hereby adopted shall remain in full force and effect.

Section 5. REPEAL OF CONFLICTING PROVISIONS

All the provisions of the Cathedral City Municipal Code as heretofore adopted that are in conflict with the provisions of this ordinance are hereby repealed.

Section 6. EFFECTIVE DATE

This ordinance shall take effect thirty (30) days after its second reading by the City Council.

Section 7. POSTING

The City Clerk shall within 15 days after passage of this Ordinance, cause it to be posted in at least three (3) designated public places; shall certify to the adoption and posting of this Ordinance; and shall cause this Ordinance and its certification, together with proof of posting, to be entered in the Book of Ordinances of this City.

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Section 8. CERTIFICATION

The foregoing Ordinance was approved and adopted at a meeting of the City Council held on _____, 2005 by the following vote:

Ayes:
Noes:
Abstain:
Absent:

Kathleen J. De Rosa, Mayor

ATTEST:

APPROVED AS TO CONTENT:

Pat Hammers, City Clerk

Bud Kopp, Senior Planner

APPROVED AS TO FORM:

Charles R. Green, City Attorney

Reviewed by:

Donald E. Bradley, City Manager